



**U.S. Army Corps  
Of Engineers**  
Norfolk District

Fort Norfolk, 803 Front Street  
Norfolk, Virginia 23510-1096

CENAO-CO-R  
98-LOP-1

## LETTER OF PERMISSION

**Effective date:** August 28, 1998

**Expiration Date:** August 28, 2003

**Authorized Activities:** Virginia Department of Transportation roadway and railway projects.

The Virginia Department of Transportation (VDOT) is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to proceed with roadway and railway projects involving work, structures, and filling (both temporary and permanent) in the waters of the United States of the Commonwealth of Virginia.

Activities authorized by this letter of permission do not require further authorization under the provisions contained in 33 CFR 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest. This letter of permission shall not be interpreted as authorizing any work other than that which is outlined below.

All work undertaken outside the following conditions, standards, and limitations will require separate Department of the Army authorization.

### Special Conditions:

1. Projects proposed by VDOT will be discussed at a regularly scheduled permit coordination meeting attended by representatives of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Environmental Protection Agency, and the Corps of Engineers. At the meeting, these agencies will comment on each of the projects. Five calendar days after the meeting the aforementioned agencies will receive a copy of their comments from VDOT and will then have an additional fifteen calendar days to change their comments. VDOT will notify the Corps of any comment changes. For those projects where the Federal agencies do not object and VDOT agrees to incorporate agency recommendations into the final project plans, permits can be issued at the end of the fifteen-day comment period. A project will be authorized by this letter of permission only after final design sketches have been presented which are acceptable to the aforementioned agencies.
2. In those cases where objections cannot be resolved, the project must then be processed as an individual permit in accordance with 33 CFR 325.
3. The District Engineer will require an individual Department of the Army permit for any project which he determines to have greater than minimal individual or cumulative impacts.

4. All State and local requirements and regulations pertaining to the project will remain applicable, in addition to the Virginia Sedimentation and Erosion Control Handbook.
5. To assure preservation of water quality, VDOT must apply for and obtain a 401 Water Quality Certification or waiver from the Virginia Department of Environmental Quality, Water Division for all discharges of dredged or fill material.
6. Any modification to the project plans, made after final permit coordination, must be re-coordinated at a permit coordination meeting. The modification must be acceptable to the aforementioned agencies in order for it to qualify under this letter of permission. Excluded from this requirement are minor modifications which do not increase the project's total impacts and/or lessen the impacts (for example, changes in the dimensions of a causeway which do not result in increased fill quantities, provided that less than 50% of the width of the waterway is blocked and no additional wetlands are involved; the placement of a causeway on the upstream side of a bridge project rather than on the downstream side, provided that no additional wetlands are involved; any reductions in fill quantities, unless the purpose of the fill is erosion control). These minor modifications should be cleared with the Corps by telephone prior to implementation.
7. Prior to the commencement of any work authorized by this letter of permission, VDOT shall advise the Norfolk District, in writing, of the time the authorized activity will be commenced. VDOT shall furnish the appropriate Resident Engineer and the contractor(s) a complete copy of this permit along with all drawings and any special conditions. Further, you shall advise the Norfolk District upon completion of the project, including any required mitigation.
8. VDOT is authorized to use the Craney Island Rehandling Basin and/or the Craney Island Dredged Material Management Area (DMMA) for placement of dredged material only if the project is related to the development or maintenance of navigation improvements in the port of Hampton Roads (consistent with H. D. 563, 79th Congress, 2nd Session, P.L. 79-525). The special conditions which must be adhered to and forms which must be completed in order to use Craney Island will be added to this permit for those projects for which it applies.
9. The outer facing of temporary cofferdams must be installed first and must consist of non-erodible materials. Riverjack (i.e., rocks, cobbles and pebbles with small amounts of sand and silt) is considered suitable for the construction of temporary cofferdams. Causeways are to be constructed of non-erodible material. No more than one-half of the width of the waterway shall be blocked at any one time. Cofferdams and causeways must be completely removed from the waterway upon completion of the project for which they were constructed. All riprap material must consist of clean non-erodible material.
10. If the waterway affected is a "Navigable Waterway of the United States", over which the United States Coast Guard (USCG) asserts jurisdiction, the location and clearances of the bridge or structure must also be approved by the USCG. If the waterway affected is within the Tennessee River watershed over which the Tennessee Valley Authority (TVA) asserts jurisdiction, the bridge or structure must also be approved by TVA.
11. If the display of lights and signals on any structure or work authorized by this letter of permission is not otherwise provided for by law, such lights and signals as may be prescribed by the USCG shall be installed and maintained by and at the expense of VDOT. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.

12. VDOT hereby recognizes the possibility that the structure permitted herein may be subject to damage by waves from passing vessels. The issuance of this letter of permission does not relieve VDOT from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash.
13. VDOT must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire roadway or railway so that, if necessary, they may exercise their authority under Section 9 of the Endangered Species Act.
14. If the activity involves a discharge of dredged or fill material, the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230.
15. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization, unless authorized by this permit.
16. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
17. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
18. If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
19. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
20. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.
21. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

General Conditions:

1. This letter of permission will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.
3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the

district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at:

<http://www.fws.gov/~r9endspp/endspp.html>

and

[http://kingfish.ssp.nmfs.gov/tmcintyr/prot\\_res.html#ES](http://kingfish.ssp.nmfs.gov/tmcintyr/prot_res.html#ES) and recovery

4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Authorized activities must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.

8. No activity may cause more than a minimal adverse effect on navigation.

9. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

10. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.

12. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-10, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
14. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
15. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
16. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.
19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.
20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
21. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal projects.
  - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.
22. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 20 above).
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

24. This letter of permission, unless further modified, suspended or revoked, will be in effect until August 28, 2003. Upon expiration, it may be considered for revalidation.

25 August 1998

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Date

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Robert H. Reardon, Jr.  
Colonel, Corps of Engineers  
District Engineer